

Distribution and payment of profit in joint stock company and advance payment

Abstract

Although the theme of this diploma thesis may seem traditional, its topicality results from the ongoing expert debate of legal doctrine and the recent legislative activity, resulting into the adoption of Act No. 33/2020 Coll. that will change the legal environment in which the distribution, payment of profits and advances on it occur. This thesis aims to map selected problematic issues and to analyze them, considering expert opinions of legal doctrine, domestic jurisprudence and to some extent as well the foreign legal regulation. To achieve this goal, the legislation on which ground problematic questions arise is also considered.

This thesis is divided into five chapters, the last three of which can be described as crucial. The first chapter lays out the conceptual definition of profit, dividends, and royalties, as well as the comparison between the right to profit and the right to a share in profit while not leaving aside equity and other own resources. The following chapter deals with the different types of profit-related shares in relation to their classification as preferred shares, shares with a different share of profit, a fixed share or shares with a subordinate share of profit. This chapter also comments on whether a joint-stock company can issue shares with no right to a dividend. The third chapter begins with an analysis of the legal conditions of profit distribution, after which the so-called time test of financial statements is accentuated. It also describes possible ways of distribution of profits and deals with the issue of the disposition of persons whose disposition rights arise as a result of approving the distribution of profits. Considerable attention is paid to shareholders' side-letters, as they may significantly affect the shareholder's property rights. At the end of the third chapter, it is analyzed under which circumstances it is possible to not distribute the profit. The penultimate chapter is then concerned with the payment of profit and its return to a joint-stock company. Emphasis is added on the limits to be observed from the year 2021. Subsequently, the subject of the analysis is the limitation of the payment of profit, its form, method, and maturity. Regard is also given to the related issue of liability of the statutory body, as well as to the question of profit reversion. The last chapter deals with advances in profits and their pitfalls, especially in terms of the instructions of the general meeting towards the statutory body of the joint-stock company. Nevertheless, attention is paid to the assumptions of the admissibility of payment of advances for profit, its maximum amount or its settlement.

Key words: profit distribution, profit payment, advance payments